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Supreme Court, U.S.
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In the

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1972

No. 72-922

MARY LOUISE GREEN PASCHALL, ET AL.,
Appellants,

VERSUS

CHRISTIE-STEWART, INC., ET AL.,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF OKLAHOMA.

MOTION TO DISMISS AND/OR AFFIRM OF R. H. VAUGHN AND R. W. GARRETT

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February, 1973

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Appellees, R. H. Vaughn and R. W. Garrett, respectfully move, pursuant to Rule 16 of the Rules of this Honorable Court, that the appeal from the lower court in this case be dismissed and/or the judgment of the lower court be affirmed on the grounds that the issues presented do not present substantial federal questions and/or are so lacking in substance as not to warrant further briefing or oral argument, such issues having heretofore been determined by this Honorable Court.

STATEMENT

Appellants in their Jurisdictional Statement filed herein only briefly discuss the procedures established in Oklahoma for the State to levy and collect ad valorem taxes which has always been recognized as one of the supreme powers of the State, essential to its maintenance.

In order for this Honorable Court to examine the issues presented by Appellants, Appellees strongly feel the Court should be made aware of the statutory procedures employed by the State in the exercise of its power to tax. Absent such information, the Court could not explore or determine whether the issues raised by Appellants present substantial federal questions. The following is, therefore, a brief outline of the procedures then followed in Oklahoma in the collection of ad valorem taxes.

The County Treasurer of each County is charged with the collection of taxes, and no demand is required, *but it is the duty of every person* to attend the Treasurer's Office and pay his taxes. Notwithstanding that no demand is necessary, the County Treasurer is required and does mail a Tax Statement to each taxpayer at his last known address, but failure of the taxpayer to receive such statement does not extend the date such taxes are due nor relieve the taxpayer of the duty and responsibility of paying the same.

Ad valorem taxes become due and payable on the 1st day of November of each year, and unless one-half are paid before January 1st, the entire tax becomes delinquent. If the first half of the taxes are paid, the second half becomes delinquent if not paid on or before April 1st of the following year.

If the taxes remain unpaid on the 1st day of April, the County Treasurer is required to advertise and sell for the County, such real estate for taxes. Appellants have set forth in their Jurisdictional Statement the statute then applicable to such original sale. The time and place of such sale was fixed by statute as the first Monday in November between the hours of 9:00 a.m. and 4:00 p.m., at the office of the County Treasurer. If there are no bidders at the public sale, the County Treasurer bids on the property on behalf of the County and the County acquires a Tax Lien on the real property.

Should any real estate purchased by the County at the original sale remain unredeemed for a period of two (2) years from the date of such sale, the County Treasurer is required to proceed to advertise and conduct a Resale of the property. The Appellants have set forth in their Jurisdictional Statement the statute then applicable to the notice required to be given at such resale. The time and place for such resale was fixed by statute as the second Monday of May between the hours of 9:00 a.m. and 4:00 p.m.

Within thirty (30) days after such resale, the County Treasurer is required to execute and deliver to the purchaser at said sale, a deed to the real property, which vests the grantee with absolute and perfect title in fee simple to said real property; and twelve (12) months after said deed shall have been filed for record no action shall be commenced to avoid or set aside said deed. Provided, that persons under legal disability shall have one year after removal of such disability within which to redeem said property.

ARGUMENT

The Appellants do not and have not contended the applicable Oklahoma Statutes were not followed which resulted in the loss of their mineral interest, but contend the statutory notice requirements are repugnant to and insufficient under the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

The Oklahoma Supreme Court has held the statutory method of assessment of land for ad valorem taxes in Oklahoma is *in rem* and although a mineral deed creates an interest in land, it does not follow that such an interest may be assessed and taxed separately from the land itself, when the mineral interest is non-producing. *Cornelius* v. *Jackson*, 201 Okla. 667, 209 P.2d 166. Further, it was the duty of the surface owner to attend and pay the taxes, and if not paid, the mineral holders have the right to pay the taxes and assert an equitable lien against the surface owner. *Cochran* v. *Godard*, 182 Okla. 506, 78 P.2d 692.

This Honorable Court in *Anderson Nat. Bank* v. *Luckett*, 321 U.S. 233, 64 S.Ct. 599, 88 L.Ed. 692, citing other authorities, stated, "All persons having property located within a State and subject to its dominion must take note of its statutes affecting the control or disposition of such property and of the procedure which they set up for those purposes. Proceeding for the assessment of taxes, the condemnation of land, the establishment of highways and public improvements affecting landowner are familiar examples."

The Oklahoma Supreme Court has likewise held that every person is charged under the law with notice and

knowledge as to whether his taxes are paid and if they are not paid, he is charged with the knowledge that the land may be sold in the manner provided by law, and the owner is charged by law with notice of the time and place where such sales are required to be made. *Ponder* v. *Eby*, 194 Okla. 407, 152 P.2d 268.

In the Statement of the Case, within the Jurisdictional Statement filed by Appellants, they state it was stipulated the mineral owners received no actual notice of either the original sale or the resale. No contention is made, however, that the Appellants were not well aware of the ad valorem taxes statutes which provided for the manner of sale and the time and place of such sale if the taxes were not paid.

Appellants rely on *Mullane* v. *Central Hanover Bank & Trust Company*, 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865 (1950); *Covey* v. *Town of Somers*, 351 U.S. 141, 76 S.Ct. 724, 100 L.Ed. 1021 (1956); *Walker* v. *City of Hutchinson*, 352 U.S. 112, 77 S.Ct. 200, 1 L.Ed.2d 178; and *Wisconsin E.P. Co.* v. *City of Milwaukee*, 352 U.S. 948, 77 S.Ct. 324, 1 L.Ed.2d 241 (1956), to sustain the jurisdiction of this Honorable Court and to support a holding they were not accorded due process of law thereby presenting a substantial Federal Question to this Court. To the contrary, Appellees think such Authorities clearly support the issues raised do not present substantial Federal Questions, or are so lacking in substance as not to warrant further briefing or oral argument.

Mullane v. *Central Hanover Bank & Trust Co., supra*, did not in Appellees' opinion destroy or modify the traditional and acceptable use of notice by publication nor did it

require personal notice in order for due process to be accorded. Nor did the Court intend to relieve a person of the actual notice he was charged with under the law in order to protect his property, which is clearly manifested by the Court, citing *Anderson National Bank* v. *Luckett, supra,* in the *Mullane* opinion.

The concepts and reasoning of the *Mullane* decision as applied by the Court in *Covey* v. *Town of Somers, supra,* are not applicable since the Oklahoma Statutes protect a person under a legal disability and allow him or her to redeem the property within one year after removal of such disability.

In *Walker* v. *City of Hutchinson, supra,* and *Wisconsin Electric Power Co.* v. *City of Milwaukee, supra,* this Honorable Court held that the *Mullane* case established the rule that, if feasible, notice must be reasonably calculated to inform parties of proceedings which may directly and adversely affect their legally protected interest and that it was impossible to set up a rigid formula as to the kind of notice that must be given; that the notice required will vary with circumstances and conditions.

The Appellants were charged with and had actual statutory notice of the time and place of the original sale and resale, but did nothing to protect their interest. For more than seven (7) years after their interest had been taken they did nothing and then the action instituted was not by Appellants but by the purchaser of an Oil and Gas Lease.

Appellees contend the issues of Appellants have heretofore been presented to this Court in *Cornelius* v. *Jackson,*

supra, and were rejected for want of a substantial Federal Question, 335 U.S. 906, 69 S.Ct. 412 (1949), and again in the case of *Robertson* v. *Lemmon,* 189 Kan. 619, 371 P.2d 175, and dismissed by this Court for want of jurisdiction, 375 U.S. 5, 84 S.Ct. 40 (1963). In each of these cases, the Supreme Courts of Oklahoma and Kansas cited, *Leigh* v. *Green,* 193 U.S. 79, 24 S.Ct. 390, 48 L.Ed. 623, wherein this Honorable Court in discussing proceedings for the sale of land for taxes said:

> "Proceedings of this nature are not usually proceedings against parties; nor, in the case of lands or interest in lands belonging to persons unknown, can they be. They are proceedings which have regard to the land itself rather than to the owners of the land; and if the owners are named in the proceedings, and personal notice is provided for, it is rather from tenderness to their interest, and in order to make sure that the opportunity for a hearing shall not be lost to them, than from any necessity that the case shall assume that form."

It is further pointed out to the Court that since non-producing mineral interests are not separately taxed on an ad valorem basis, the names of the mineral owners do not appear on the County Treasurer's records, and to require the County Treasurer to search the County Clerk's records to ascertain the names of mineral owners would be unreasonable and impracticable in view of the fact that such owners may number in the hundreds. These are the practical matters which this Court recognized in the *Mullane* decision when it stated it has not hesitated to approve or resort to publication as a customary substitute in another class of cases where it is not reasonably possible or practicable to give more adequate warning.

CONCLUSION

Appellees respectfully submit this Appeal should be dismissed for lack of substantial Federal Questions and/or that said Federal Questions are so lacking in substance as not to warrant further briefing or oral argument and the appeal should be affirmed based upon existing Authorities.

Respectfully submitted,

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February, 1973

CERTIFICATION OF SERVICE

I hereby certify that the following, who are all the parties required by law to be served in the above case, were this day each mailed three (3) copies of the foregoing Motion to Dismiss and/or Affirm, postage prepaid:

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